

# Hodge-Martin-Chatfield



## Historical Museum, Inc.

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Mr. Mark Wolfe, Executive Director  
Mr. Charles Sadnick, Division Director for History Programs  
Mr. Bob Brinkman, Historical Marker Coordinator  
General History Program  
Texas Historical Commission  
Via Electronic Mail

Re: Comments on Proposed Rules –

- **Changes to §17.2, relating to Review of Work on County Courthouses, Title 13, Part 2, Chapter 17 of the Texas Administrative Code**
- **New proposed removal rule §21.13 in Chapter 21 TAC that details a process for relocating or removing markers/monuments that the Commission has the authority to protect.**
- **New Subchapter F and rule §26.28 TAC, related to removal of designations for privately or publicly owned landmarks, within Title 13, Part 2, Chapter 26 of the Texas Administrative Code.**

Dear Mark, Charles, Bob, and THC Staff:

Please accept these my comments regarding the Proposed Rules changes. As one vitally interested in the history of our great State and its preservation and commemoration, I have been involved in the placing of many Texas Historical Markers. Our museum at Chatfield with our all-volunteer staff has worked with our County Historical Commission and with you for years.

The Marker Program together with the Landmark Program has been the envy of states throughout the Union because of the breadth of subject matter recognized through the programs, standards of scholarship necessary to earn approval of markers and landmark status, and the commitment of the volunteers who work at the local level to make their fellow Texans proud of our history. It is with disappointment that I now must comment on what I perceive as moving in the wrong direction through these rule changes. Instead of the traditional role of working for more markers and more landmarks, for the first time in its existence, THC moves in the direction of censorship by removing markers and landmark status already established.

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## **§17.2, relating to Review of Work on County Courthouses**

My specific comments begin by observing that the definition of “monument” includes “markers and statuary located on . . . the Capitol grounds.” As the subject of this rule relates to “Review of Work on County Courthouses,” the inclusion of any marker or statuary on the Capitol grounds in this definition is outside the subject matter of the rule and cannot be included.

I next turn to the proposed rule’s inclusion of “markers and statuary” located on courthouse squares and lawns and other public property. The scope of the rules seem to be expanded by this Proposed Rule to make THC the initial forum for removal of monuments and statuary previously erected on public property such as courthouse and municipal properties. On the contrary, the initial forum for removal requests should remain at the local elected governing bodies with any role for THC to come after the local government has approved removal.

I object to the determination of no fiscal impact to local government regarding the rule that now will define “monuments” subject to removal under other proposed rules so as to include markers and statuary located on local courthouse properties. Removal of markers and statuary on a courthouse lawn necessarily will have a fiscal impact due to cost of removal and cost of re-landscaping, as well as the cost of substitute statuary/markers. All that need be done is to review the costs to the City of Dallas for repairing damage to grounds and sidewalks and re-landscaping when the Lee Park Statue and Pioneer Cemetery monument were removed.

I also object to the determination that there will be no anticipated economic costs and no effect on local economies by now defining “monuments” subject to removal under other proposed rules to include markers and statuary located on local courthouse properties. By now including markers and statuary on courthouse lawns subject to THC removal under other proposed rules, an economic impact statement and regulatory flexibility analysis becomes necessary because the removal of markers and statuary on rural courthouse squares and lawns initiated by THC action rather than action of the local commissioners court will impact tourism.

## **New proposed removal rule §21.13 in Chapter 21**

I reiterate and restate my comments above objecting to the determination of no fiscal impact to local government and no anticipated economic costs and no effect on local economies.

I next turn to the astounding lack of any criteria provided in the proposed rule for removal. Unlike Rule 21.9 that provides at multiple levels for “criteria governing evaluation for approval or rejection of applications” to put up a marker, there is not even the hint of any criteria for removal of a marker that already has gone through a rigorous process for approval. It appears that a majority of however many members of the THC’s History Programs Committee that happen to show up on the day the removal is considered can vote to “tear it down” for ANY reason or NO reason at all.

This begs the question, “Why do we even need to put a process in place for unfettered, unjustified removal of historical markers that people worked so hard to put up?” Is the reason for consideration of a request under the proposed rule to tear a marker down because it is historically inaccurate? No, there already is a process in Rule 21.12 for removal based on inaccuracy of fact in the text or installation at the wrong place "based on verifiable, historical evidence." While there may be no hint of any criteria for removal, there is that hint in the Public Benefit/Cost Note attached to the posting on the Secretary of State’s website of the reason this rule has been promulgated. “(T)he public benefit will be the provision of a procedure (in the proposed rule) through which the public may voice concern and request removal of historical markers and monuments erected by the State of Texas.”

The proposed rule makes “public concern” a valid reason for tearing down a marker or monument. Public concern about what? Is the THC really going to adopt a rule that allows for removal of a marker or monument erected, perhaps, decades before based on as vague, amorphous, non-specific, and subjective a concept as “concern?” How many “concerned” citizens are required in order to begin a process of removal that by its very nature has to be divisive and damaging to the community where the marker or monument is located and to the stakeholders who put it up? Apparently, only one person who is “concerned” according to proposed Rule 21.13(a) can begin this process at the THC without having to gain support from the local community in any way. The proposed rule is nothing short of a codified procedure for someone or some group “to raise hell” about the subject of a marker about which someone else or some other group felt so strongly should be commemorated that they raised the money and went to the trouble of getting a marker or monument approved and erected.

I greatly object to a state agency turning itself by these proposed rules into a forum for venting. There is a remedy for those who complain that they dislike the subject of a marker or monument that already has been found through a rigorous process to be historically significant. That remedy is to engage in the historical research, write a proposal, file an application with THC, and raise the money necessary for the marker or monument to recognize what they believe is historically significant.

THC has prided itself on being “the state agency for historic preservation,” and on how it “save(s) the real places that tell the real stories of Texas.” The proposed rules put an asterisk next to the claims of your agency by which you will qualify the historic preservation and the “real stories” with the language “only if no one has concerns.” THC always has based its approval and support of markers and monuments on facts - not feelings, not concerns, and not that some would prefer to re-imagine the story.

In summary, the rules for removal are unnecessary because removal should be based only on mistakes of fact in the text of the marker or inaccurate location per Rule 21.12. The scope of the rules also should not be expanded to make THC the initial forum for removal of monuments and statuary previously erected on public property such as courthouse and municipal properties.

I will now address a number of specific problems with the text of the Proposed Rule 21.13.

If the Commission adopts a new removal rule, it should make the process similar to that provided for the original application to put up the marker with a wide number of stakeholders providing opportunity for input.

- The process must include a THC prescribed form with specific criteria to be addressed and requiring the removal application form be filed with the local county historical commission (CHC), or in the absence of a CHC, the County Judge.
- Lack of involvement of the local county commissions in the removal process is a fatal flaw. There should be a requirement that the local CHC where the marker or monument is located approve the removal by a vote of 2/3 of its membership. The extraordinary super majority should be required because removal of a marker or monument for reasons other than verifiable historical inaccuracy or wrong location is, itself, an extraordinary remedy. In essence, it is the death penalty for the marker or monument, and extraordinary requirements are necessary.
- In those counties which lack a local CHC, any Proposed Rule should require the prior approval of the County Judge as is required in Rule 21.12.
- Since not all markers and statuary located on public grounds are Official State Historical Markers owned by THC, any removal rule should provide that when the owner is not the State of Texas the consent of any owner of a marker, monument, or statuary located on public grounds must be obtained before a request for removal can be considered by the CHC.
- The person or group who sponsored the marker application and paid for the marker is a stakeholder whose consent should be obtained before request for removal can be considered by the CHC. The removal applicant should make the marker applicant whole by reimbursing the marker applicant the cost of the marker adjusted to reflect present U.S. dollar value.

Any new removal rule must treat removal other than that under Rule 21.12 as extraordinary relief which the proposed rule does not. THC cannot adopt a rule that makes commonplace the wholesale removal of markers and monuments throughout Texas. Such an unintended consequence would undermine the legitimacy of the Agency and destroy the Marker Program.

- Any rule should require payment of a removal application fee which should be at least the same as the marker application fee at the time of the request for removal.
- In the Proposed Rule there are no provisions to discourage frivolous or vexatious requests without merit. The same limitation found in Rule 21.12(q) that "no individual or

organization may file more than one request for review per calendar year" should apply to any individual or group that wants to remove a marker or monument.

- In order to limit the removal process to persons or groups with the financial capability to safely remove the marker or monument, more is needed than the hopeful expectations of Proposed Rule 21.13(b)(6) and (h). The person or group seeking removal should be required to post a bond at the time the application is filed payable to the THC in the amount the THC determines will pay the cost of the removal and storage until the marker can be put up again.
- Requests to remove "markers or statuary located on public grounds" (as defined in Section 17.2) should first have the approval of the respective publicly elected body such as the County Commissioners Court, City Council, or School Board administering or owning the property where the marker or statuary is located BEFORE a request for removal can be considered by the County Historical Commission in order to provide local elected officials with input.
- Since not all markers and statuary located on public grounds are Official State Historical Markers owned by THC, any removal rule should provide that when the owner is not the State of Texas the consent of any owner of a marker, monument, or statuary located on public grounds must be obtained before a request for removal can be considered by the CHC.
- Any determination of removal must be approved by a 2/3 vote of the THC History and Programs Committee for the same reasons that approval by the CHC must be by a super majority.

The Commission's History Programs Committee must be provided with criteria for proper evaluation of the application for removal once approval has been given by the local CHC, the non-state owner, if any, and any publicly elected body which may own the land on which the monument, marker, or statuary is located.

- The Committee should hold at least one public hearing in the County in which is located the marker for which a request for removal has been received, and reasonable limitations as to time permitted speakers can be made only by the Committee upon a motion and vote.
- Since approval of a marker can only result from proof of Historic Significance, removal of a marker can only be allowed because the subject of the marker is no longer of historic significance and such "Historic Insignificance" can only be shown by factual evidence.
- Any supporting materials submitted for the justification for removal of a marker or monument must indicate how the subject is no longer historically significant.
- A professional historian panel as provided in Rule 21.12 should be employed in this rule to weigh the evidence provided of Historic Insignificance of the subject of the marker.

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- A finding of “Historic Insignificance” so as to justify removal of a marker cannot be supported by a specific action taken by or belief held by a person who is the subject of a marker. A specific action taken by or a belief held by one or more persons connected with a marker commemorating an event or place cannot support a finding of “Historic Insignificance” so as to justify removal of a marker.

### **New Subchapter F and rule §26.28 TAC**

I reiterate and restate my comments above objecting to the determination of no fiscal impact to local government and no anticipated economic costs and no effect on local economies. The removal of a State Antiquities Landmark designation from a publicly or privately owned property will affect tourism in the community in which the Landmark is located. Both publicly owned and privately owned sites open to the public and having the Landmark status use that status in attracting visitors, and, therefore, income. A reduction in tourism by definition will have an economic cost and an effect on local economies, especially in rural areas where there may be only one or two such Landmarks.

My specific comments as to the Proposed Rule focus on the need to recognize that there are stakeholders other than the owner of the property and THC. While I applaud the public notice provisions in the Proposed Rule, Subsection (a)(1) should be clarified to state that the “adjoining or neighboring county” is the “adjoining or neighboring county to that in which the Landmark is located” rather than to the applicant’s residence. The applicant may reside far removed from the location of the Landmark, even out of state.

The Texas public which wants to see our history preserved needs to be recognized as a stakeholder by providing for a Public Hearing at which members of the public may address the removal of the Landmark status. This Public Hearing should be held, not in Austin, but in the county in which the Landmark is located so as to give full opportunity to the public that might be most affected to speak to the Antiquities Advisory Board. The approval of any removal of Landmark status by the Antiquities Advisory Board should be by a 2/3 vote due to the extraordinary relief requested by the removal applicant. The same reasons apply to this super majority as do to my suggested super majority votes of the pertinent bodies referred to in Proposed Rule 21.13. Subsection (e) should not permit the owner to request nor the Commission to approve waiver of the 30 day comment period because to do so does not recognize that others are stakeholders in addition to the property owner and the Commission.

While I recognize and support the inherent rights of a property owner to the use and enjoyment of his/her land, I hope that the Commission will craft rules for removal of Landmark status so that it is invoked only in extraordinary circumstances. If removal of Landmark status is to become commonplace just as with removal of markers and monuments, the integrity of the Agency and the preservation of Texas history will suffer.

Thank you for allowing me the opportunity to provide my comments to your Proposed Rules.

Sincerely yours,

*Rob*

Robert N. (Rob) Jones, Jr.  
Hodge-Martin-Chatfield Museum